



OLD VALUES - NEW HORIZONS

COMMUNITY DEVELOPMENT

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Zoning Board of Adjustment

February 9, 2015

7:30 pm @ Community Development Office

Approved Minutes

Mike Scholz	Chairman	Present	Mike Mazalewski	Alternate	Excused
Heath Partington	Vice Chair	Present	Kevin Hughes	Alternate	Present
Mark Samsel	Secretary	Present	Jim Tierney	Alternate	Present
Pam Skinner	Member	Excused	Jay Yennaco	Alternate	Excused
Bruce Breton	Member	Excused			

Staff:

Dick Gregory, Code Enforcement Administrator

Suzanne Whiteford, Minute Taker (Remote)

Meeting called to order at 7:30pm by Chairman Scholz.

Mr. Tierney seated for Mr. Breton

Mr. Hughes seated for Ms. Skinner

Lot 21-Z-268, Case #1-2016

Applicant – Joseph Maynard/Benchmark Engineering, Inc.

Owner – The Carr Hill Family Trust

Location – 25A aka 27 Cobbetts Pond Rd.

Zone- Residence A and Cobbetts Pond & Canobie Lake Watershed Protection (CPCLWP).

Variance relief from the following section of the Town of Windham Zoning Ordinance and Land Use Regulations is requested to construct a new dwelling, garage and screen room:

Section 402.2 to expand the volume from 27,720 cu.ft. to 32,256 cu. Ft.

Section 405.5 to allow some of the new structures to not conform to the required setbacks.

Section 702, App. A-1 to allow a side setback of 20ft. where 30ft. is required, to allow a rear/lake setback of 35 ft. is required, and to allow a rebuilt screen room to remain 6ft. from the high water mark where 50 ft. is required.

Chairman Scholz advised the ZBA members and the public that **Zoning Ordinance Section 402.2** was noticed to the abutters incorrectly. The correct **Section** is **406.2**. Based on this error Case #1-2016 will need to be continued to allow for the correction to be made and noticed.

Motion by Mr. Samsel to continue Case #1-2016 due to error in posting, to the next scheduled ZBA meeting on February 23, 2016

Second by Mr. Hughes

Vote 5-0-0

Motion Carries

Lot 13-C-123, Case #48-2015

Applicant- Joseph Maynard/Benchmark Engineering Inc.

Owner- Jarosky Revocable Trust

Location- 15 Roulston Road

Zone- Residence A

Jarosky Revocable Trust

Variance relief from the following sections of the Town of Windham Zoning Ordinance and Land Use Regulations is requested to allow a 5 acre sub-division plan to be submitted.

Section 603.1.1 to allow a ten (10) unit apartment building and a single family detached dwelling on this proposed lot where only one single family detached dwelling is allowed per lot.

Section 702, App. A.1 to allow frontage of 238 ft. where 475 ft. is required.

Mr. Maynard requested Case #48-2015 be withdrawn due to the duplication created with updated filing as noted above during discussion for Case # 46-2015.

Motion by Mr. Samsel to grant, at the applicant's request, for Case #48-2015 to be withdrawn as it has been replaced by Case #2-2016

Second by Mr. Hughes

Vote 5-0-0

Motion Carries

Case #46-2015 read into the record by Mr. Samsel

Lot 13-C-123, Case # 46-2015 (continued from 12/22/15)

Applicant- Joseph Maynard/Benchmark Engineering, Inc.

Owner- Jarosky Revocable Trust

Location- 15 Roulston Road

Zone- Residence A

Variance relief from the following sections of the Town of Windham Zoning Ordinance and Land use Regulations is requested to allow for the proposed sub-division plan.

Section 611.6.4.2 to allow all the lots in a proposed open space sub-division to have 20 ft. front and 15 ft. side setbacks where 50 ft. and 30 ft. are required.

Applicant, Mr. Joseph Maynard informed the ZBA members and public that one change made to original plan previously submitted was the refile of the section which had the sideline setback for one of the multifamily dwellings omitted.

Case #47-2015 and letter of authorization read into the record by Mr. Samsel.

Lot 13-C-123 & 200, Case # 47-2015 (Case continued from 12/22/15)

Applicant- Joseph Maynard/Benchmark Engineering, Inc.

Owner- Jarosky Revocable Trust

Location- 15 Roulston Road & Roulston Road

Zone- Residence A

Variance relief from the following sections of the Town of Windham Zoning Ordinance and Land Use Regulations is requested to allow the plan for the proposed sub-division to go to the Planning Board as is.

Section 611.5.4 to allow this lot to not meet the requirements of this section.

Section 702, App.A-1 to allow this lot to not meet the minimum lot size by soils.

Laura Scott, Director of Community Development

Ms. Scott referred to a letter sent by her on behalf of David Sullivan to Mrs. Phyllis Jarosky dated April 7, 2009.

The letter was sent in response to a request from Mrs. Jarosky with assistance in how to list her property for sale.

At the time of the correspondence it was Ms. Scott's first week of full time work with the Town and she relied on the information available from the assessor on file with the Town for Lot 13-C-123 & 200.

Applicant Joseph Maynard, Benchmark Engineering reviewed Case #46-2015 and Case #47-2015

The second dwelling on the property was built in 1983.

Mr. Maynard submitted a copy of a building permit and a Town seal from Mrs. Jarosky's personal home files. The document Mr. Maynard submitted was not available in the Town Hall documents.

Chairman Scholz asked if the extra lot to the right of the subdivision was included in the initial calculations. Mr. Maynard did not include the 2 acre lot in the traditional yield plan.

Chairman Scholz does not have any record of 6 units existing in one of the houses on the property. The only available record from the Town lists the house as having 6 bedrooms.

Mr. Tierney commented that in the 1980's the property was zoned limited industrial per the available records from Ms. Scott.

Chairman Scholz and Mr. Partington reviewed the available tax records which indicate the dwelling in question has multiple bedrooms not apartment units.

Chairman Scholz submitted the available septic design as Exhibit A for Case #46-2015 and Exhibit A for Case #47-2015

Mr. Maynard offered to gather affidavits from past residents that lived in the apartment units as proof for dating the existence of the units as pre-zoning.

Chairman Scholz commented that if the zoning at the time the tax assessments were done didn't allow apartments than what exists today is not a grandfathered use.

Mr. Maynard referred to the building permit and certificate of occupancy from the owner's home files. Mr. Maynard pointed out that the buildings have existed for more than 10 years with a valid building permit.

Mr. Samsel pointed out that the testimony being heard is specific to Case #2-2016 and suggested to open the Case and sequence it before Case #46-2015 and Case #47-2015.

Mr. Samsel read Case #2-2016 into the record

Lot 13-C-123, Case #2-2016

Applicant – Joseph Maynard/Benchmark Engineering, Inc.

Owner – Jarosky Revokable Trust

Location – 15 Roulston Rd.

Zone – Residence A

Variance relief from the following sections of The Town of Windham Zoning and Land Use regulations to sub-divide a 5 acre parcel from the 2.38 acre lot, containing two (2) buildings with eleven (11) apartments.

Section 603.1.1 to allow eleven (11) apartment units in two (2) to remain.

Section 702, App. A-1 to allow frontage of 238 ft. where 475 ft. is required and one of the buildings to be 36ft. from the side lot line, where 80 ft. is required.

Motion by Mr. Samsel to move all testimony forward for Case #2-2016

Second by Mr. Hughes

Vote 5-0-0

Motion carries

Mr. Gregory pointed out there is an existing building permit for multifamily units which was not a permitted use on the property in 1983.

Mr. Tierney asked if Mr. Gregory has a copy of the 1983 ordinance. Mr. Tierney commented that there is no evidence apartment units existed before 1983.

Mr. Tierney pointed out there is a discrepancy in the number of bedrooms in the units between Mr. Gregory's letter and Mr. Maynard's testimony. Mr. Gregory made a typo and confirmed that Mr. Maynard's testimony to the number of units that currently exist in the buildings.

8:20 pm the ZBA took a 10 minute recess to allow time for Mr. Gregory to locate the 1983 zoning ordinance.

8:30pm ZBA resumed meeting.

Chairman Scholz receive a copy of the 1981 zoning ordinance for limited industrial.

Chairman asked if the receive date of the septic system. Mr. Maynard confirmed.

The record does not exist in the town files and the state has not been able to locate the septic design plan.

Chairman Scholz is trying to figure out how multifamily got approved in limited industrial when it was not a permitted use in 1983.

Mr. Tierney pointed out in the 1981 ordinance a site plan approval is required. On the 1983 building permit says site plan non-applicable.

Chairman Scholz asked Mr. Gregory to update his letter with the correct information regarding units and bedrooms.

Chairman Scholz is not able to make a determination on grandfathered use at this time due to the conflicting information and documents regarding what has existed on the property and what exists now. Chairman Scholz has to go on what is there now and not as a grandfathered use.

Mr. Maynard states he has spoken to people that lived in the apartments in the 1960's.

Mr. Maynard read the five variance criteria for **Case #2-2016** into the record.

Chairman Scholz requested that Exhibit A (the septic plan for Case #46-2015, Case #47-2015, and Case #2-2016) be entered into the record for Case #2-2016.

Motion by Mr. Samsel to waive the reading of the abutter list for Case #2-2016 as it is the same list for the previously continued cases.

Second by Mr. Tierney

Vote 5-0-0

Motion carries

Chairman Scholz acknowledged that a letter of authorization exists in the record.

Chairman opened the hearing to the public.

Craig Leppanen, 14 Stonehedge Rd.

- Abutter to the existing property
- Did not have any knowledge of apartments, Mr. Leppanen was under the impression a large farmhouse existed.
- The existing use is within a 23 acre parcel and the applicant is requesting the use to exist in a 5 acre parcel.
- Mr. Leppanen referred to the traditional yield plan on display and believes the lots with larger houses in the traditional yield plan would fit better into the abutter's neighbourhood.
- Mr. Leppanen believes the proposed plan would be contrary to public interest because the proposed plan would not fit in with the abutting properties which are large colonials on individual lots.
- Mr. Leppanen does not understand how the proposed plan fits in with the existing apartment units.
- Mr. Leppanen is concerned about the long term use if the zoning is changed to allow apartments on the lot.
- Mr. Leppanen questions how a new development going in next to an 1800 apartment complex with a colonial neighborhood behind it fits into what is already in place.
- Mr. Leppanen does not believe the hardship criteria has been met.

Chairman Scholz asked Mr. Leppanen if he would have any issue with the traditional yield plan being developed with the existing apartments.

- Mr. Leppanen replied that he had no knowledge of what actually exists on the property and assumed there was a variance for the dwellings on the property.
- It makes sense to have a plan that fits in with the existing neighborhood.
- Mr. Leppanen does not understand how a septic system for the existing plan on 23 acres will work with the addition of the houses.
- The water condition of the existing houses was affected when Medicus was built. Mr. Leppanen is concerned additional development will further affect the water condition of the existing homes.
- Mr. Leppanen does not see where the hardship criteria is met.

Tom Case, 70 Mountain Village Rd.

- If a variance is granted for the apartments raises a concern for the safety of the public.
- Mr. Case clarified there are two septic systems on the property are for the existing dwellings
- Mr. Case spoke to the side lot set back of 36 feet not meeting the Residential A requirement of a 30 foot side lot.
- Mr. Case agrees with Mr. Partington that the town doesn't jump zones because the dwellings don't comply with zoning.
- Mr. Case suggested the applicant request variances and not condition based on some other zone.
- If the one lot is part of the open space subdivision it is too large as only 30,000 sq. ft. is allowed not 5 acres. The applicant would need a variance for the 5 acres or subdivide the property.
- If the property is subdivided there is not frontage and it will require a road. Mr. Case believes there some confusion with this issue.
- The apartments have been there a long time. He would not want to buy a house there.
- Once the apartments go to 5 acres it cannot be a grandfathered use. The applicant is applying for relief so the grandfathered use doesn't apply anyway.

Wayne Morris, President of Conservation Commission

- Mr. Morris clarified that all cases are being considered together.
- Mr. Morris has comments from Conservation Commission regarding **Section 611.5.4.**
- Mr. Morris is asking what is going to the Planning Board without soil based lot sizing. Mr. Morris requested clarification of the applicant's statement: "the soils are good for the most part".
- Mr. Morris asked is soil testing was done on the 2 acre parcel next to the proposed subdivision.
- Mr. Morris believes clarification of the soil testing needs clarification. If the applicant is not going to the Planning Board with soil tests for the subdivision it circumvents zoning.

Spencer Joyner, 18 Stonehenge Rd

- Mr. Joyner wants to echo and reinforce what Mr. Leppanon said.
- Mr. Joyner believes the plan will diminish property values.
- Having an apartment complex on a property with the proposed plan abutting large beautiful colonials is inconsistent.
- Mr. Joyner understands that the open spaced subdivision is better for the community.
- The 5 acres with the existing dwellings does not fit in with community.
- Mr. Joyner is requesting that the ZBA not grant a variance for continued use of the existing apartments.

Mr. Samsel asked Mr. Joyner, based on his testimony of living in the neighbourhood for many years, if he just now realized there are existing apartments.

- Mr. Joyner stated it was apparent to him based on the activity on the property included a couple apartments. He didn't realize until this meeting how much actually existed.

Mr. Partington asked Mr Joyner if he has any comments on the quality of life.

- Mr. Joyner commented that area in existence has a different quality of life then neighborhood on Stonehenge Rd.

- Mr. Joyner is looking to expand his family and existing use of his back yard which abuts the apartments which do not provide the type of neighbourhood for raising his family.
- Mr. Joyner was not aware that the existing property abutting his home was not Residential A and had multiple apartment units.

No further public comments

Mr. Maynard is hearing the abutters don't like the open space subdivision.

Mr. Maynard pointed out that the front of the property is still zoned limited industrial.

Mr. Maynard does not feel retaining the existing apartments on 5 acres will not impact the quality of life.

The development is abutting limited industrial businesses.

Ms. Jarosky is related to the people in the front home and granted an easement to the property.

Mr. Maynard clarified that the only lot he is requesting relief from soil based testing is the lot next to the tracks. Mr. Maynard performed test pits on the 2 acre lot when a parking lot was being considered.

Mr. Maynard confirmed he is looking to keep the existing dwellings on a 5 acre lot. The proposed open space subdivision eliminates the opportunity for industrial development,

Mr. Tierney asked if the existing septic designs will fit for the proposed plan.

Mr. Maynard replied that he would have to submit a new plan as the existing system is an approved commercial use.

Mr. Maynard informed the ZBA that testing was done on the land for hazardous materials and the tests came back clear and are on record with the State of NH.

Mr. Maynard reviewed the setbacks.

Mr. Samsel asked what the setback was from the back of the existing house to the abutters.

Mr. Maynard replied the houses are 150 ft. from the lot line. Mr. Maynard is not looking for relief for any of the new proposed houses with regards to set backs.

Chairman Scholz invited the public for limited rebuttal.

Mr. Wayne Morris, Chairman of Conservation Commission asked for clarification on the test pits for the acreage that was being considered for a parking lot.

Mr. Maynard clarified he did test pits on the acreage for the use of the property as a parking lot. Soil based house lots testing was not performed on the 2 acres in question.

Motion by Mr. Samsel to go into deliberation for Case #46-2015, Case #47-2016, and Case #2-2016

Second by Mr. Tierney

Vote 5-0-0

Motion carries

Mr. Samsel suggested the discussion be specific to Case #2-2016 as the remaining two cases hinge on the decision made for Case #2-2016.

Mr. Partington does not recall over the past six years ever having been presented a more confusing proposal.

Mr. Partington reviewed the 5 variance criteria.

With regards to Variance Criteria #1 and #2 for Case #2-2016, the apartment buildings within Residential A does not meet the zoning for single family usage. Granting a variance will stay with the land where as now it does not have that power based on a nonconforming existing use. Presuming the buildings are there legally with their current use; the current use exists on 23 acres. The request will reduce that size to less than ¼ of that. The concern from the public regarding an increase of water, noise, and traffic are pertinent to the discussion regarding a change in character. Based on all of these considerations, Mr. Partington does not believe the proposal meets the first two variance criteria.

Mr. Partington addressed the variance criteria for substantial justice. Mr. Partington believes based on the testimony provided, it does not meet the criteria. The negative impact to the abutters outweighs the impact to development the land for the current owners.

Mr. Partington addressed variance criteria #4, with regards to the values of the surrounding properties being diminished. The abutters to the back of the property already live with the apartment complexes. There is potential for the existing dwelling to diminish property value of the open space subdivision houses.

Chairman Scholz believes granting a variance could possibly diminish the value of existing homes abutting the property.

Mr. Partington acknowledged Chairman Scholz's point and added that there could possibly be an increase in usage by granting the variance.

Mr. Partington does not think the use of the property meets Variance Criteria #5. The use is not part of the land. In Mr. Partington's opinion the use of apartment buildings and multifamily homes does not meet the hardship criteria.

Chairman Scholz agrees with Mr. Partington on all five variance criteria. Chairman Scholz does not think the proposal meets any of the five variance criteria.

Mr. Samsel agrees with Chairman Scholz and Mr. Partington. Mr. Samsel is concerned that the property is Residential A. The current use is not permitted in Residential A.

Mr. Hughes agrees with the Board's comments.

Mr. Tierney agrees with the Board's comments. Mr. Tierney finds the way the proposal is structured makes it difficult for review.

Chairman Scholz commented on Section 702, App. A-1; he does not think relief needs to be granted. Chairman Scholz agrees with Mr. Case's comments about trying to make zoning conditions apply to property with different zoning. The Board agrees with Chairman Scholz.

A motion was made by Mr. Partington for Lot 13-C-123, Case #2-2016 to deny variance relief from Section 603.1.1 to allow eleven (11) apartment units in two (2) dwellings to remain per plan submitted.

Second by Mr. Hughes

Vote 5-0-0

Motion Carries

The applicant was informed there is a 30 day appeal period.

A motion was made by Mr. Partington for Lot 13-C-123, Case #2-2016 that a variance is not necessary from Section 702, App. A-1 as the relief spelled out is not applicable to Resident A zone.

Second by Mr. Hughes

Vote 5-0-0

Motion Carries

The applicant was informed there is a 30 day appeal period.

A motion was made by Mr. Partington to deny variance relief for Lot 13-C-123 Case #46-2015 without prejudice.

Second by Mr. Hughes

Mr. Samsel commented the case could be presented in the same manner

Vote 5-0-0

Motion carries

The applicant was informed there is a 30 day appeal period.

A motion was made by Mr. Partington to deny variance relief for Lot 13-C-123 & 200 Case #47-2015 without prejudice.

Second by Mr. Hughes

Vote 5-0-0

Motion carries

The applicant was informed there is a 30 day appeal period.

Request for rehearing for Case #50-2015

Mr. Tierney recused himself from this discussion.

Chairman Scholz reviewed each paragraph listed on the application for re-hearing of Case #50-2015

Paragraph #1 there was no technical error, no new information

Paragraph #2 there was no technical error, no new information.

- **The Board further clarified a decision was not made based on the date of the referenced letter for December, 2 2015.**

Paragraph #3 there was no technical error, no new information

Paragraph #4 there was no technical error, no new information

Paragraph #5 there was no technical error, no new information

Paragraph #6 there was no technical error, no new information

Paragraph #7 there was no technical error, no new information

Paragraph #8 there was no technical error, no new information

Paragraph #9 there was no technical error, no new information

Paragraph #10 there was no technical error, no new information

Chairman Scholz clarified no technical errors were made and no new information was presented regarding all issues/points/paragraphs listed on the entire first page.

Mr. Partington echoed Chairman Scholz. The remaining Board members agreed with Chairman Scholz and Mr. Partington.

Chairman Scholz directed the Board's attention to page #2.

- Mr. Samsel commented on bullet #3; the letter was referenced and a decision was made. Chairman Scholz believes the permits were referenced and the letter was discoverable.
- Mr. Samsel believes there is a difference between the decision made and what is appealable.

The Board reviewed all the bulleted items listed on page #2.

Chairman Scholz believes that no technical errors were made and no new information was presented.

Mr. Partington agrees with Chairman Scholz.

The remaining Board members agree with Chairman Scholz.

A motion was made by Mr. Samsel to deny the request for rehearing for Case 50-2015 as information provided to the Board this evening presented no new information and there was no technical error made.

Second by Mr. Hughes

Vote 4-0-0

Motion Carries

Andrew Dinga, 127A&B Lowell Rd.

- Mr. Dinga asked for an explanation regarding the decision of the case.

Mr. Samsel explained that the ZBA did not consider the merits because of the decision made regarding the timeliness factor.

- Mr. Dinga asked about the process for appeal

Chairman Scholz reiterated that the permits can be appealed.

- Mr. Dinga thinks the building permits does not specify home or garage.
- Mr. Dinga states he has had 15 people walk away from buying a home he has listed for sale.

Chairman Scholz again reviewed the process for appeal and again reviewed the ZBA's determination for this case.

Mr. Samsel explained that the ZBA is quasi-judicial and makes decisions based on laws. The decision made by the ZBA was solely on timeliness and the merits of the case were never heard.

- Mr. Dinga commented the property is a hardship on him.

Mr. Tierney re-joined the Board

Mr. Gregory reviewed the upcoming agenda items.

Motion by Mr. Tierney to adjourn

Second by Mr. Hughes

Vote 5-0-0

Motion carries

Meeting adjourned at 10pm

Meeting Minutes submitted by Suzanne Whiteford, ZBA Minute Taker

